

May 12, 2006

Timothy Hesemann, Esquire
Department of Justice
Carvel State Office Building
820 N. French Street, 7th floor
Wilmington, DE 19801

Ms. Tamara Coleman
723 Peachtree Lane, Apt. F
Claymont, DE 19703

Re: *State of Delaware v. Tamara Coleman*
Case No.: 0502009183

Date Submitted: May 8, 2006
Date Decided: May 12, 2006

LETTER OPINION

Dear Mr. Hesemann and Ms. Coleman

Trial in the above captioned matter took place on Monday, May 8, 2006 in the Court of Common Pleas, New Castle County, State of Delaware. Following the receipt of evidence and testimony the Court reserved decision.

The defendant, Tamara Coleman ("Coleman") was charged by Information with multiple traffic and misdemeanor counts including, but not limited too, possession of drug paraphernalia, 16 *Del. C.* §4771(a); Failure to Have a Registration Card, 21 *Del. C.* §2108; Failure to Yield, 21 *Del. C.* §4133; Unregistered Motor Vehicle, 21 *Del. C.* §2115(1); Driving While Suspended, 21 *Del. C.* §2756(a); Failure to Destroy Expired Tag, 21 *Del. C.* §2131(b); and finally, Failure to Have Insurance Identification in her possession, 21 *Del. C.* §2118(p). All the Informations and charging documents filed with the Clerk of the Court by the Attorney General allege the 6th day

of February, 2005 as the offense date at South Walnut Street, Wilmington, Delaware in New Castle County.

This is the Court's Final Decision and Order.

THE FACTS

Officer Joseph Miller (Officer Miller), a Wilmington Police Officer was sworn and testified. On February 2, 2005 at 9:51 p.m. in New Castle County, Officer Miller observed a Lexus, and then a female "run up to the driver's side". The area is known for prostitution and drug activity and he considered the incident "suspicious". Officer Miller then observed the defendant actually driving the instant motor vehicle in New Castle County on Walnut Street, City of Wilmington.

The motor vehicle driven by defendant then failed to yield at South Walnut Street. Officer Miller made a traffic stop of the vehicle, which he again identified as a green Lexus. Officer Miller was in a marked police vehicle and was in full uniform when he activated his overhead lights. Officer Miller made the traffic stop while on South Walnut Street. He approached the vehicle and he observed the defendant behind the wheel of the car in the driver's seat. Officer Miller testified that he was approximately twelve (12) inches away from the defendant and also observed a passenger in the rear seat who he asked to exit the motor vehicle because she was "acting suspicious".

When Officer Miller opened the car door, he observed a glass pipe used for crack cocaine on the driver's side floor. Officer Miller testified he actually saw the "crack pipe" and certified he is familiar with the same as drug paraphernalia. The defendant was in actual control of the motor vehicle. He checked and later determined the defendant had a suspended driver's license. State's Exhibit 1 was moved into evidence which was a State request for a certified driving

record by the Wilmington Department of Police. State's Exhibit 1. The document indicated the defendant previously had her driving privileges suspended. Her driver's license number was listed on the document; her date of birth was August 23, 1983; her gender was female; and the document indicated as certified DMV document indicated that her license was actually suspended.

After the traffic stop, the defendant was unable to produce her driver's license or registration for the motor vehicle. Officer Miller observed that the motor vehicle tags were also expired as well as the registration and was expired.

On cross-examination Officer Miller testified he was "positive" that it was the defendant in the vehicle not her mother.

On re-direct Officer Miller testified he saw the car for approximately one hour in front of Walnut Street. He testified that he was "quite sure" after observing the defendant twelve inches away that she was the party identified in Court today as the defendant.

Defendant testified and claimed that she was visiting her sister in Chester, Pennsylvania on February 6, 2005. She states that her mom "uses crack" and she never had a license. Defendant claims her mom was the subject of the misdemeanor and motor vehicle arrests. The defendant claimed she was not in Wilmington on the date of the charging documents.

THE LAW

The State has a burden of proving each and every element of the offense beyond a reasonable doubt. 11 *Del. C.* §301. *State v. Matushefske*, Del. Supr., 215 A.2d 443 (1965).

The State must also prove jurisdiction and venue. 11 *Del. C.* §232.

As established law indicates, "a reasonable doubt is not a vague, whimsical or possible doubt, 'but such a doubt as intelligent, reasonable and impartial men may honestly entertain after a conscience consideration of the case.'" *Matushefske*, 215 A.2d 445.

The State also has a burden to prove beyond a reasonable doubt jurisdiction and venue. 11 *Del. C.* §232. *James v. State*, Del. Supr., 377 A.2d 15 (1977); *Thornton v. State*, Del. Supr., 405 A.2d 126 (1979).

OPINION AND ORDER

The Court as the trier of fact is the sole judge of the credibility of each fact witness. Obviously, each side at trial told a diametrically opposed version of the facts in question. If the Court finds the evidence presented to be in conflict it is the Court's duty to reconcile these conflicts, if reasonably possible, so as to make one harmonious story of it all. If the Court cannot do this, the Court must give credit to the portion of the testimony which, in the Court's judgment is most worthy of credit and disregard any portion of the testimony which in the Court's judgment is unworthy of credit. In doing so, the Court takes into the consideration the demeanor of the fact witnesses, their apparent fairness in giving their testimony, their opportunities in hearing and knowing the facts about which they testified, and any bias or interest they may have concerning the nature and facts of the case.

It is clear that the defendant was the actual person stopped on the date charged in the Information on February 6, 2005. The police officer was "absolutely certain" and very credible and testified that he was less than twelve inches from the defendant when he made the traffic stop and spoke directly with her. There is limited testimony from the defendant before the Court. The defendant did not produce any fact witnesses and made a very brief statement at trial. Considering the totality of circumstances, as well as the credibility instruction that the Court

must follow, the Court finds that the State has met its burden of proof on the possession of drug paraphernalia charge 16 *Del. C.* §4771(a); Failure to Have a Registration Card charge, 21 *Del. C.* §2108; Failure to Yield the Right Away charge, 21 *Del. C.* §4133; as well as the Unregistered Motor Vehicle, 21 *Del. C.* §2115(1); Driving While Suspended, 21 *Del. C.* §2756(a) and Failure to Destroy Expired Tag, 21 *Del. C.* §2131(b).

The Court notes the criminal docket and the numerous Capias history for this defendant to appear at arraignment and trial. The Court also made an informal colloquy with the defendant and learned the defendant made no formal or informal report to the Attorney General for criminal impersonation by the mother.

The Court finds the State did not have sufficient information to determine the Failure to Have Insurance Identification in her possession, 21 *Del. C.* §2118(p) and therefore finds the defendant not guilty of that traffic charge. The Court adjudicates beyond a reasonable doubt the balance of the misdemeanor and traffic charges. 11 *Del. C.* §301.

The Clerk of the Court is directed to set this matter for sentencing at the earliest convenience of the parties.

IT IS SO ORDERED this 12th day of May, 2006.

John K. Welch
Judge

/jb

cc: Theresa Bleakly, Scheduling Supervisor
CCP, Criminal Division